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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KIM, DAVID S

ART UNIT

PAPER NUMBER

2633

DATE MAILED: 01/28/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/608,657

Applicant(s)

ARECCO ET AL.

Examiner

David S. Kim

Art Unit

2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-3,5-10,12,13 and 16-21.Claim(s) withdrawn from consideration: none.

8. ☒ The drawing correction filed on 29 December 2003 is a) ☒ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): rejection of claims 14-15 under 35 U.S.C. 112 by proposed cancellation of claims 14-15.

Continuation of 5. does NOT place the application in condition for allowance because:

Applicant's proposed amendment to the claims still would not overcome the standing rejections. Also, Applicant's arguments are unpersuasive.

Regarding Applicant's proposed amendment, Applicant's proposed amendment would overcome the rejection of independent claims 1 and 6 under 35 U.S.C. 102(b) as anticipated by Cadeddu et al. and the rejection of independent claim 1 under 35 U.S.C. 102(a) as anticipated by Shiragaki et al. However, independent claim 1 would still remain rejected under 35 U.S.C. 103(a) as being unpatentable over Shiragaki et al. in view of Cadeddu et al. (see Paper No. 10, p. 11-12). Also, independent claim 6 would still remain rejected under 35 U.S.C. 102(a) as anticipated by Shiragaki et al. (see Paper No. 10, p. 9-11). The rejection of the other claims would also depend on the rejections of independent claims 1 and 6. As the rejection of claims 1 and 6 would remain, so also the rejection of the other claims would remain. Accordingly, Applicant's proposed amendment to the claims still would not overcome the standing rejections.

Regarding Applicant's arguments, Applicant's arguments in Paper No. 11 largely constitute a simple repetition of arguments presented by Applicant in Paper No. 8. The Office has already provided a response (Paper No. 10) to Applicant's arguments from Paper No. 8. Accordingly, a repetition of germane portions of said response by Examiner in Paper No. 10 is respectfully presented here, modified to respond to Applicant's present arguments in Paper No. 11:

"Applicant does not present an argument against the...rejections under Shiragaki et al. Accordingly, Examiner maintains the standing rejections under Shiragaki et al." (Paper No. 10, p. 25).

"Regarding the rejections under double patenting, Applicant stands prepared to submit a terminal disclaimer (Paper No. 11, p. 12, last paragraph) and also requests the withdrawal of these rejections. The burden falls to the Applicant to adequately point out how the claims in the copending application are distinguishable from the pending claims in this instant application with objective evidence. Applicant does not provide such evidence. Thus, Examiner respectfully maintains the standing rejections" (Paper No. 10, p. 27).

Summarily, Applicant's arguments are not persuasive. Thus, Examiner respectfully maintains the standing rejections.

  
JASON CHAN  
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